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Co-Counsel to the Debtor and Debtor in Possession

Co-Counsel to the Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

CCA Construction, Inc.,¹

Debtor.

Chapter 11

Case No. 24-22548 (CMG)

**DEBTOR'S SUPPLEMENTAL BRIEF IN CONNECTION WITH THE SCOPE
AND BUDGET OF THE AUTHORIZED INVESTIGATION OF THE EXAMINER**

The above-captioned debtor and debtor in possession, CCA Construction, Inc. (“CCA” or the “**Debtor**”), respectfully submits this supplemental brief on the appropriate scope and budget for the examiner’s (the “**Examiner**”) anticipated investigation in accordance with the terms of the Court’s *Order Granting the Appointment of an Examiner* [Docket No. 211 at ¶4] (the “**Examiner Order**”).

¹ The last four digits of the Debtor’s federal tax identification number are 4862. The Debtor’s service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.



Proposed Scope of Examination

1. CCA respectfully requests the Court establish the following scope (the “**Scope**”) for the Examiner’s work: (i) examination of the scope and process of the ongoing investigation (the “**Independent Investigation**”) currently being undertaken by the independent and disinterested special committee (the “**Special Committee**”) of the Debtor’s board of directors (the “**Board**”) including providing recommendations to the Special Committee and its advisors regarding: (a) the process, (b) methodology, and (c) breadth of the Independent Investigation; and (ii) providing input or feedback to the Special Committee and its advisors regarding (x) potential topics of the Independent Investigation and (y) potential claims to consider.

2. CCA further requests that the Examiner be directed to file a written report setting forth the result of its investigation within 30 days from the entry of an order approving the scope of the Examiner’s investigation, or such later date as may be agreed upon by the Special Committee and the Examiner upon a filing of a notice of extension with the Court.

3. CCA further requests the budget for the Examiner’s investigation, including the compensation of any professionals retained by the Examiner, be set at no more than \$100,000.

Background

4. Elizabeth Abrams is an experienced fiduciary and investment professional with nearly 20 years of experience as an investment banker, focused on advising stressed and distressed companies and their investors. On October 21, 2024, two months before the chapter 11 filing, Ms. Abrams was appointed to the Board as an independent director. Almost immediately thereafter, the Board formed the Special Committee and appointed Ms. Abrams as its sole member. Ms. Abrams had no prior connections with CCA or any of its affiliates.

5. The scope of the Special Committee’s delegated authority includes, among other things, to review and evaluate the terms and conditions and determine the advisability of certain transactions as to which other directors may have a conflict of interest. In addition, the Special Committee is tasked with investigating any potential causes of action that CCA may hold in circumstances where other directors may have, or are deemed to have, a conflict of interest, as determined by the Special Committee in its sole discretion.

6. On January 23, 2025, BMLP Properties, Ltd. (“**BMLP**”) filed the *Motion of BML Properties, Ltd. for Entry of an Order Appointing an Examiner* (the “**Examiner Motion**”) [Docket No. 88]. In addition to seeking the appointment of an examiner, the Examiner Motion challenged the independence of Ms. Abrams and, accordingly, the Special Committee. *See Examiner Motion* ¶¶ 30, 42.

7. On February 6, 2025, the Debtor filed the *Debtor’s Objection to Motion of BMLP Properties, Ltd. for Entry of an Order Appointing an Examiner* (the “**Debtor’s Objection**”) [Docket No. 120]. In addition to arguing in favor of a more limited scope of any examiner investigation, the Debtor’s Objection addressed and corrected the record with respect to misstatements of fact and allegations regarding Ms. Abrams independence in the Examiner Motion.² *See Debtor’s Objection* ¶¶ 29-34.

8. The Examiner Motion was heard by the Court during the February 13, 2025 omnibus hearing. At that time, the Court heard live testimony from Ms. Abrams on behalf of the Special Committee, which established that the Special Committee operated independently from

² Needing to correct the record in the face of BMLP’s misstatements was not, unfortunately, an isolated instance; rather, BMLP has repeatedly made unfounded allegations with respect to CCA, its personnel and its advisors, all of which have been refuted. *See, e.g., Limited Response to Limited Objection of BML Properties, Ltd. to Application to Retain Duane Morris LLP as Counsel to Special Committee* [Docket. 291]

management and affiliates; that it was empowered to act on behalf of CCA in matters involving potential conflicts of interest; and that it was prepared to evaluate potential claims or engage further investigative resources as appropriate and at the appropriate time. *See* Feb. 13, 2025 Hr’g Tr. 43:23–76:17.

9. Following argument, the Court stated that while it was not convinced an examiner was necessary, it was required by applicable law in this circuit to appoint one. *See* Feb. 13, 2025, Hr’g. Tr. 212:12-15 (“As far as the examiner motion goes, the examiner is going to be appointed. If I didn’t have the FTX decision from the Third Circuit maybe I wouldn’t appoint an examiner, at least not at this point.”). At the same time, the Court recognized that it would be appropriate to place limits on the scope, duration, and cost of the Examiner’s investigation, Feb. 13, 2025, Hr’g. Tr. 212: 12-25; 213: 1-13; 218: 21-23. The Court also found that the Special Committee is independent and was reasonably appointed. *See* Feb. 13, 2025, Hr’g. Tr. 213:01-7 (“I think I can find from what I’ve heard today that the appointment of Ms. Abrams was a reasonable appointment and that that doesn’t need to be examined. That she, she has been effectively and fairly appointed as an independent [director]”).

10. On March 5, 2025, the Court entered the Examiner Order. Pursuant to the terms of that order, the United States Trustee (the “**U.S. Trustee**”) was to appoint an examiner, subject to the approval of the Court, within 21 days of the earlier of (i) a decision in the appeal in New York State Supreme Court, Appellate Division, First Department in favor of BLMP or (ii) June 1, 2025. Examiner Order ¶2.

11. Following Court approval of the debtor-in-possession financing and the commencement of the next phase of the chapter 11 case, the Special Committee commenced the Independent Investigation of, among other things, potential causes of action belonging to the

Debtor's estate, all consistent with Ms. Abrams' testimony to the Court that she anticipated initiating an investigation at the appropriate time. *See* Feb. 13, 2025 Hr'g Tr. 70:18–71:4. The Special Committee requested that Cole Schotz conduct the investigation given that, other than Cole Schotz's limited prepetition advice in connection with chapter 11 planning, it did not have any other relationship with the Debtor and or its affiliates prior to the Petition Date nor was it involved in the underlying Baha Mar Litigation (as defined below).

12. The Special Committee has and continues to make significant progress in conducting the Independent Investigation, including the necessary document discovery and interviews. Cole Schotz began the investigation process in March and received more than 336,000 documents from the Debtor. Upon receipt, Cole Schotz ran targeted searches on those documents, which resulted in approximately 39,000 relevant documents for review. As of the date hereof, all 39,000 documents have been reviewed by first and second level reviewers. Cole Schotz also conducted initial interviews with several members of management in March and April, and is now in the process of conducting more formal interviews with Debtor management and select personnel. BDO Consulting Group, LLP (“**BDO**”) supports Cole Schotz and the Special Committee with the Independent Investigation by providing important forensic and accounting support. Cole Schotz and BDO meet with the Special Committee on a weekly basis to discuss the status of the Independent Investigation.

13. On April 8, 2025, the New York State Supreme Court, Appellate Division, First Department issued a decision and order upholding the trial court's ruling in *BML Props. Ltd. v China Construction America, Inc., et al.*, No. 657550/2017 (the “**Baha Mar Litigation**”), finding the Debtor and its two co-defendant affiliates liable to BMLP in the amount of \$1,642,598,493.15. As the Court is aware and approved, CCA has joined its co-defendants in seeking further appellate

review of the decision, filing a petition for review by the New York State Court of Appeals on May 8, 2025.

14. In accordance with the Examiner Order, on April 29, 2025, the U.S. Trustee appointed Todd Harrison, Esquire to serve as the Examiner. [Docket No. 280]. On May 7, 2025, the Court entered the *Order Approving the Appointment of a Chapter 11 Examiner by United States Trustee*. [Docket No. 296].

15. Without pointing to any supporting evidence whatsoever, BMLP speculated that CCA would use the pendency of its appeal to delay the Examiner's investigation, hinder the progression of this chapter 11 case, and "resist a thorough investigation by the Examiner." *Objection of BML Properties, Ltd. to Debtor's Motion for Entry of an Order Granting Relief from the Automatic Stay to Seek Further Appellate Review* [Docket 285 at ¶35]. At the May 5 hearing, BMLP again engaged in rank speculation, asserting that CCA was "throwing up a Hail Mary and then they're going to use the existence of this further appeal to delay and thwart the examiner." *See* May 5, 2025 Hr'g Tr. at 17:16–18. The Court rejected that argument, stating, "I'm not sure I see that here," and emphasized that "the case needs to proceed" *Id.* at 20:8–9, 12–13. Consistent with the Court's directive, CCA has continued to take steps to ensure that the case is in fact progressing.

16. On May 7, 2025, BMLP's counsel sent a letter to Cole Schotz, requesting that the Special Committee immediately cease the Independent Investigation in light of the Examiner's appointment.³ Almost contemporaneously (within hours), the Examiner sent a similar letter to Cole Schotz, likewise requesting that the Special Committee suspend its investigation and

³ *See Exhibit A.*

asserting that the Examiner is the proper party to conduct the investigation—notwithstanding that this Court has not even yet addressed the proper scope of the Examiner’s role in this case.⁴ The Examiner’s letter also raised the same insinuations about CCA as BMLP’s letter and adopted certain false statements that BMLP has repeatedly raised with the Court, despite CCA previously correcting BMLP’s misstatements on the record.⁵ The substance and timing of the two letters suggested that their drafting and submission to Cole Schotz had been coordinated.

17. Both letters also recklessly alleged that the Independent Investigation should be suspended because Cole Schotz is conducting the Independent Investigation while serving as counsel to the Debtor. As noted above, Cole Schotz had no prepetition relationship with the Debtor or its affiliates, and its sole prepetition advice to the Debtor was limited to preparation of the chapter 11 case. Cole Schotz was not involved in any of the prepetition events that resulted in the Baha Mar Litigation or in the Baha Mar Litigation itself, nor does it represent individual defendants or investigation targets. Cole Schotz is not investigating itself or transactions it advised upon. Contrary to the Examiner’s and BMLP’s position, there is nothing unique about the role that Cole Schotz is playing here. As Cole Schotz has done on numerous prior occasions,⁶ it is standard and customary for debtor’s counsel to advise an independent committee and conduct an investigation

⁴ See **Exhibit B**.

⁵ See e.g., May 5, 2025 Hr’g Tr., at 9:18-24 (CCA counsel refuting BMLP’s false assertions regarding the Baha Mar litigation).

⁶ See, e.g., *In re Tupperware Brands Corporation*, et al., Case No. 24-12156 (BLS) (Bankr. D. Del.); *In re Vyair Medical, Inc.*, et al., Case No. 24-11217 (BLS) (Bankr. D. Del.); *In re View, Inc.*, et al., Case No. 24-10692 (CTG) (Bankr. D. Del.); and *In re Bed Bath & Beyond, Inc.*, et al., Case No. 23-13359 (VFP) (Bankr. D.N.J.).

where it had no relationship with the debtor except in connection with its retention as bankruptcy counsel, and no involvement in any underlying events.⁷

18. On May 9, 2025, Cole Schotz, on behalf of the Special Committee, responded to both letters, corrected the inaccuracies in the Examiner's letter and declined to suspend the Independent Investigation in order to continue to progress the chapter 11 case.⁸ Thereafter, on May 12, 2025, counsel for CCA and counsel for BMLP participated in a meet and confer regarding the scope and budget of the Examiner's investigation. The parties remain in disagreement regarding the appropriate Examiner scope and budget.

19. On May 9, 2025, after receipt of the coordinated letters from BMLP and the Examiner, CCA's counsel learned that counsel for BMLP is co-counsel with the Examiner's proposed counsel in a matter pending before Judge Michael Kaplan, and that the two firms have been working together since at least April 2024, with a number of the same core lawyers involved in both matters.⁹ Astonishingly, this relationship was not disclosed in the Examiner's verified statement. [Docket No. 281] (Examiner verifying under penalty of perjury that he has no connections to the Debtor, creditors and their respective attorneys). Promptly upon learning of

⁷ See, e.g., *In re F21 OpCo, LLC*, Case No. 25-10469 (MFW) (Bankr. D. Del.); *In re WOM S.A.*, et al., Case No. 24-10628 (KBO) (Bankr. D. Del.); *In re First Mode Holdings, Inc.*, et al., Case No. 24-12794 (KBO) (Bankr. D. Del.); *In re Icon Aircraft, Inc.*, et al., Case No. 24-10703 (CTG) (Bankr. D. Del.); *In re SiO2 Medical Products, Inc.*, et al., Case No. 23-10366 (JTD) (Bankr. D. Del.); *Near Intelligence Inc.*, Case No. 23-11962 (TMH) (Bankr. D. Del.); *In re Genesis Global Holdco, LLC*, Case No. 23-10063 (SHL) (Bankr. S.D.N.Y.); *In re Prodigy Investments Holdings, Inc. (f/k/a Proterra, Inc.)*, Case No. 23-11120 (BLS) (Bankr. D. Del.); *In re BlockFi Inc.*, et al., Case No. 22-19361 (MBK) (Bankr. D.N.J.); *In re Exide Holdings, Inc.*, et al., Case No. 22-11157 (CSS) (Bankr. D. Del.); and *In re Purdue Pharma L.P.*, et al., Case No. 19-23649 (SHL) (Bankr. S.D.N.Y.).

⁸ See **Exhibits C and D**.

⁹ See *In re Invitae Corp.*, Case No. 24-11362 (MBK) [Docket No 260], April 1, 2024; see also *Natera Inc v. Invitae Corporation, et al.*, Adv. Pro. No. 25-01015 (MBK)

this undisclosed relationship, CCA’s counsel notified the Office of the United States Trustee.¹⁰ The U.S. Trustee informed CCA that it was looking into the undisclosed relationship between the Examiner’s proposed counsel and BMLP’s counsel. While CCA is still reviewing the situation, it has a high level of concern that the Gibbons legal team has a close and ongoing co-counsel relationship with the Examiner’s firm and legal team, that that relationship was undisclosed, that the concealed relationship at a minimum undermines the principle of transparency that is fundamental in chapter 11 cases, and that the relationship raises serious questions regarding BMLP’s insistence on an “independent examiner.” Pending its efforts to seek further information about this situation, and in light of its concern about the Examiner’s actions prior to his scope being determined, CCA reserves all rights both in terms of the propriety of the Examiner’s appointment and the appropriate scope of the Examiner’s work.

Argument

I. Applicable Standard

20. Section 1104 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) provides that a court may appoint an examiner to conduct an examination that is “appropriate.” 11 U.S.C. § 1104(c). Under Third Circuit law “the phrase ‘as is appropriate’ in Section 1104(c) means the court ‘retains broad discretion to direct the examiner’s investigation,’ including its scope, degree, duration, and cost.” *In re FTX Trading Ltd.*, 91 F.4th 148, 156 (3d Cir. 2024) (quoting 5 Norton Bankr. L. & Prac. § 99:25 (3d ed. 2023)); *see also In re Spansion, Inc.*, 426 B.R. 114, 126 (Bankr. D. Del. 2010) (“[I]t is well-established that the bankruptcy court has considerable discretion in designing an examiner’s role.”) (citation omitted); *In re Erickson*

¹⁰ See **Exhibit E**, May 13, 2025, email from CCA’s counsel to the U.S. Trustee.

Retirement Communities, LLC, 425 B.R. 309, 2 (Bankr. N.D. Tex. March 5, 2010) (noting that judicial discretion that comes into play in defining the scope of the examiner's role/duties). In particular, the Court is authorized to “set[] the investigation’s parameters” to “ensure that the examiner is not duplicating the other parties’ efforts and the investigation is not unnecessarily disrupting the reorganization process.” *In re FTX*, 91 F.4th at 156. Accordingly, the Court has discretion to determine what constitutes an “appropriate” investigation in this case pursuant to section 1104 of the Bankruptcy Code.

II. The Scope of Examination Should be Limited and Targeted

21. The Special Committee has been given both the authority and a mandate to broadly investigate potential estate causes of action, and has duly commenced that investigation as Ms. Abrams told the Court that it would. Accordingly, the scope, duration and budget of the Examiner should be narrowly tailored to ensure that it does not unnecessarily duplicate the Special Committee’s ongoing Independent Investigation nor result in an unnecessary drain of CCA’s limited estate resources.

22. As set forth in greater detail above, the Special Committee has conducted significant work in connection with its ongoing Independent Investigation. It would contravene the terms of Section 1104 of the Bankruptcy Code, which mandates appointment of an examiner to conduct only “such an investigation of the debtor as is appropriate,” to have the Examiner conduct an investigation that duplicates the Special Committee’s work.

23. An overlap between the Special Committee’s Independent Investigation and the Examiner’s scope would impose unnecessary expense and delay, deplete estate assets, and provide no incremental benefit to the estate. The Special Committee has a fiduciary duty to conduct due diligence on the pursuit or compromise of any claim of the estate. Even if the Examiner were to

be able to complete its investigation and issue a report on the certain matters prior to the completion of the Special Committee's Independent Investigation, the Special Committee would still be required to complete its own appropriate investigation in order to fulfill its duties. As the Third Circuit expressly noted, an examiner is intended to examine and make recommendations: "we [] do not believe that an examiner can serve as a substitute for either a trustee or a creditors' committee for the purpose of avoiding fraudulent transfers." *Off. Comm. of Unsecured Creditors of Cybergene Corp. ex rel. Cybergene Corp. v. Chinery*, 330 F.3d 548, 578 (3d Cir. 2003). *See also, In re FTX Trading*, 148 F.4th at 155 ("To guarantee that 'the examiner's report will be expeditious and fair,' the sponsors forbade the examiner from acting as or representing a trustee in the bankruptcy and required that the investigation remain separate from the reorganization process."). Therefore, the Special Committee retains its fiduciary responsibility to the Debtor's estate to determine which causes of action are worthwhile to pursue irrespective of the Examiner's conclusions.

24. The duplication of effort that BMLP proposes is particularly inappropriate in the present circumstances, given the Court's previous findings in connection with this very motion that Ms. Abrams "has been effectively and fairly appointed" as independent director. Feb. 13, 2025, Hr'g. Tr. 213:01-7. There is no need for a separate investigation to backstop the Special Committee's findings, because Ms. Abrams has already been found to be independent, and she has in fact duly begun to investigate claims and causes of action with the support of Cole Schotz as counsel. In light of the Special Committee's independence, there is no reason to call into question the Special Committee's independence or suitability for it to complete its tasks. Accordingly, the Examiner's scope should be defined to complement, rather than duplicate the Special Committee's ongoing efforts. *See In re FTX Trading Ltd.*, No. 22-11068 (JTD) at 26:13 (Bankr. D. Del. Jan. 24,

2024) (Docket No. 6552) (limiting the examiner’s investigation because an examiner should not be “reinvent[ing] the wheel,” given the numerous investigations already completed or underway by the parties—including the debtors’ postpetition management, whom the bankruptcy court had determined to be disinterested); *In re Cenveo, Inc.*, No. 18-22178, ECF No. 203 (Bankr. S.D.N.Y. Mar. 15, 2018) (limiting examiner from examining issues under investigation by “a fiduciary” (creditor’s committee) that “actually has the power to ask the Court to have standing to pursue [any causes of action],” and “[is] well represented”). The Scope proposed herein complements the Special Committee’s Independent Investigation by providing the Court, and all parties in interest, an additional independent party to make recommendations on causes of action to investigate and other modifications to the Special Committee’s ongoing investigation.

25. Conversely, as set forth in the Debtor’s Objection, the Examiner scope proposed by BMLP in the Examiner Motion is effectively limitless and unprecedentedly overbroad. BMLP is seeking an examination into events and transactions that occurred without any limitation in time or type. Moreover, BMLP does not hide the fishing expedition nature of its request, because it expressly seeks authority for the Examiner to investigate “any other such matters determined to be appropriate by the Examiner” which is particularly overbroad.¹¹ BMLP’s proposed limitless scope is illustrative of BMLP’s underlying goal, to seek broad, self-serving discovery to advance its own Bahamas-based litigation strategy at the expense of all other parties in interest.

26. In light of the circumstances, the Court should find that the “appropriate” scope for the Examiner’s investigation within the meaning of section 1104(c) of the Bankruptcy Code is

¹¹ The Debtor is unaware of any examiner order with such a boundless scope, nor has BMLP cited any precedent—particularly in a case where the Special Committee has already found to be independent by the Court.

reviewing the scope and process of the Special Committee’s Independent Investigation, including the adequacy of its methodology, and breadth, and providing input or feedback to the Special Committee regarding potential investigative topics and potential claims to consider. This Scope will preserve estate resources and complement and support the Special Committee’s Independent Investigation.

27. Given the proposed scope of an Examiner’s investigation that would be appropriate here, a limited duration and a limited budget is appropriate as well. CCA respectfully submits that if an Examiner is appointed, it be required to submit its report 30 days from the entry of an order approving the scope of the Examiner’s investigation. CCA further submits that a budget of no more than \$100,000 for the Examiner and his retained professionals¹² would be sufficient to satisfactorily complete the Scope described above, consistent with the Court’s observation at the February 13, 2025 hearing that it “can’t imagine [the budget] being more than \$100,000.” *See* Feb. 13, 2025 Hr’g Tr. 225:3-6.

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¹² Consistent with paragraph 5 of the Examiner Order, the Examiner’s professionals must be subject to Court approval under standards equivalent to those set forth in section 327 of the Bankruptcy Code and Bankruptcy Rule 2014, to provide appropriate transparency and ensure that the Examiner and his professionals have no conflicts of interest or connections that undermine the Examiner’s proclaimed independence.

For the reasons set forth herein, the Debtor respectfully requests that the Court set the scope, duration and budget for the Examiner's investigation as set forth herein.

Dated: May 15, 2025

/s/ Michael D. Sirota

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Exhibit A



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May 7, 2025

VIA EMAIL ONLY

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Re: In re CCA Construction, Inc. - Special Committee Investigation

Dear Mr. Sirota:

On behalf of BML Properties, Ltd. (“BMLP”), we are following up on our prior email correspondence with you concerning the proposed retention of Duane Morris LLP (“Duane Morris”) by the special committee of independent directors (the “Special Committee”) of CCA Construction, Inc. (“Debtor”), and the investigation that your firm—which serves as counsel to the Debtor—has already commenced on behalf of the Special Committee.

As you may recall, we spoke on April 28, 2025 regarding the scope of Duane Morris’ proposed retention after the filing of our limited objection (Docket No. 273). On that call, we learned for the first time that Cole Schotz—and not Duane Morris—is apparently leading the Special Committee’s investigation into potential estate causes of action. This was surprising because Duane Morris’ retention application expressly states that Duane Morris is being retained “with respect to the Special Committee’s investigation of potential claims or causes of action of the Debtor”¹ whereas Cole Schotz’s retention application makes no reference to your firm conducting any investigation.

We hereby request that Cole Schotz immediately cease all such investigative activities. Had your firm’s role in this investigation been properly disclosed, we would have objected immediately based on the obvious conflicts of interest and lack of independence. We note that you began the investigation notwithstanding the fact that you have known since at least March 5, 2025 that an independent examiner would be appointed in this case once the New York Appellate Division rendered its decision in the state court litigation, and yet chose not to disclose the investigation to BMLP or the Court.

Accordingly, please be advised that BMLP reserves all rights, including, *inter alia*, its right to object to all fees incurred in connection with this investigation.

Very truly yours,

/S/ BRETT S. THEISEN

Brett S. Theisen
Director

¹ Docket No. 255 at 2 (Duane Morris Retention Application).

May 7, 2025

Page 2

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Exhibit B



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May 7, 2025

Steven L. Klepper, Cole Schotz
Via Email (SKlepper@ColeSchotz.com)

In re: CCA Construction, Inc., Case No. 24-22548 (CMG)

Dear Steve:

Thank you again for speaking with me on the phone today.

As the recently appointed Examiner in the CCA bankruptcy case, it is important that, among other things, I ensure the Debtor's assets are not unnecessarily dissipated.

As I get up to speed on this matter, I have come to understand over the past few days that Cole Schotz has recently been retained by the Debtor to represent the Special Committee (consisting of one member, Elizabeth Abrams) to conduct a very broad investigation of virtually any matter which may be related to the recent bankruptcy filing.

In addition, I understand that the Special Committee itself has retained Duane Morris to advise Ms. Abrams. With all due respect to you and your team, I am concerned about both the utility and the independence (perceived and otherwise) of an investigation being conducted by counsel to the Debtor, not to mention the expense of hiring two separate law firms – one to conduct the investigation, and one to oversee that investigation.

As I am sure you are aware, there are judicial findings of fraud and misappropriation of assets against the Debtor in the recently-concluded New York state court litigation. Given this unique history for a bankruptcy case, it is extremely unlikely that the creditors in the bankruptcy, the United States Trustee, or the Bankruptcy Court would be satisfied that an investigation conducted by Debtor's counsel would be seen as either independent or satisfactory.

Therefore, an investigation conducted by counsel chosen and retained by the Debtor would appear to be a waste of estate resources, especially given that an independent Examiner has now been appointed. It seems only logical that the Examiner is the proper party to conduct a truly thorough, impartial, and independent investigation which will be accepted by all parties, which I expect to be borne out at the May 22nd hearing with respect to the Examiner's scope and budget.

In re: CCA Construction, Inc., Case No. 24-22548 (CMG)
Page 2

Therefore, I request that the Debtor and Cole Schotz suspend their investigation(s), at least until the Court makes a decision on the scope and budget of the Examiner's investigation. I would appreciate your response by 5:00 p.m. ET this Friday, May 9th.

Sincerely,

/s/ Todd Harrison
Todd Harrison
Examiner

Exhibit C

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May 9, 2025

VIA EMAIL ONLY

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Re: ***In re CCA Construction, Inc., Case No. 24-22548 (CMG) – Response Letter
Regarding Special Committee Investigation***

Dear Mr. Theisen:

As you know, Cole Schotz, P.C. (“Cole Schotz”) represents CCA Construction, Inc. (the “Debtor”) in its chapter 11 cases pending in the Bankruptcy Court for the District of New Jersey. This letter is in response to your letter dated May 7, 2025 (the “Letter”) wherein you – on behalf of BML Properties, Ltd. (“BMLP”) – requested that Cole Schotz “immediately cease all . . . investigative activities.” After conferring with the Debtor’s special committee of independent directors (the “Special Committee”), the Debtor, through the Special Committee, rejects your request and has advised Cole Schotz that it should continue to move forward with the independent investigation.

More substantively, the Letter asserts – without evidence – that the independent investigation should be halted due to allegations of “obvious conflicts of interest and lack of independence.” Contrary to your position, the investigation being conducted by the Special Committee and M. Elizabeth Abrams as the Special Committee’s disinterested independent director (the “Independent Director”) is free from any conflict of interest or lack of independence. The Letter fails to identify any conflict or bias on the part of the Special Committee and the Independent Director, nor is there any. The independence of the investigation is further reinforced by the fact that the Debtor has retained disinterested counsel – Cole Schotz – to conduct the investigation on the Debtor’s behalf. Cole Schotz had no prepetition relationship or involvement with the Debtor or the Debtor’s non-Debtor affiliates or subsidiaries, with the exception of limited work relating to preparation of the chapter 11 case. As you are aware, it is customary and appropriate for a disinterested counsel to investigate potential third-party claims and causes of action for a debtor-in-possession on a post-petition basis, and Cole Schotz’s familiarity with the Debtor from the case to date will allow such investigation to be conducted in an efficient manner.

 COLE SCHOTZ P.C.

Brett Theisen
May 9, 2025
Page 2

The Special Committee also recently retained Duane Morris LLP as counsel to advise on all matters within the Special Committee's authority, including oversight of the independent investigation and coordination with Cole Schotz.

In light of your failure to identify the "obvious conflicts of interest and a lack of independence," the Special Committee has determined that continuing its investigation is consistent with its fiduciary duties. Cole Schotz has been authorized and directed to continue to the independent investigation and intends to do so.

Very truly yours,

COLE SCHOTZ P.C.

/s/ Michael D. Sirota

Michael D. Sirota
Member

cc: Warren Usatine, Esq.
Felice Yudkin, Esq.
M. Natasha Labovitz, Esq.
Todd Harrison, Esq., in his capacity as Court-appointed Examiner
Kristin K. Going, Esq.
Deanna Boll, Esq.
Office of the United States Trustee (Attn: Fran Steele, Esq. and Peter D'Auria, Esq.)
Robert K. Malone, Esq.
Morris S. Bauer, Esq.

Exhibit D

Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, NJ 07602-0800
201.489.3000 201.489.1536 fax



Michael D. Sirota
Member
Admitted in NJ and NY

Reply to New Jersey Office
Writer's Direct Line: 201.525.6262
Writer's Direct Fax: 201.678.6262
Writer's E-Mail: msirota@coleschotz.com

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New York

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Delaware

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Maryland

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Texas

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Florida

—
Washington, DC

May 9, 2025

VIA EMAIL ONLY

tdharrison@mwe.com

Todd Harrison

McDermott Will & Emery LLP

One Vanderbilt Avenue

New York, New York 10017-3852

Re: ***In re CCA Construction, Inc., Case No. 24-22548 (CMG) – Response Letter
Regarding Special Committee Investigation***

Dear Mr. Harrison:

As you know, Cole Schotz, P.C. (“Cole Schotz”) represents CCA Construction, Inc. (the “Debtor”) in its chapter 11 cases pending in the Bankruptcy Court for the District of New Jersey. This letter is in response to your letter dated May 7, 2025, which requested that the Debtor and Cole Schotz “suspend their investigation(s)” based upon the unfounded position that, among other things, “an investigation conducted by counsel chosen and retained by the Debtor would appear to be a waste of estate resources.” After conferring with the Debtor’s special committee of independent directors (the “Special Committee”), the Debtor, through the Special Committee, rejects your request and has advised Cole Schotz that it should continue to move forward with the independent investigation.

As you know, we received a letter from counsel to BML Properties, Ltd. (“BMLP”) making the same request of the Debtor and Cole Schotz. The Special Committee similarly rejected BMLP’s request for the reasons discussed in the response letter attached as Exhibit A hereto (the “BMLP Response Letter”). The points raised in the BMLP Response Letter concerning the independent nature of the investigation are incorporated herein.

Importantly, we also must correct the statement in your letter that “there are judicial findings of fraud and misappropriation of assets against the Debtor in the recently-concluded New York state court litigation.” This is inaccurate. Neither the New York state trial court nor the Appellate Division made any finding that CCA engaged in any fraud, as a review of those courts’ rulings makes plain. The Debtor’s liability was predicated on an alter ego and veil-piercing theory of liability. During our May 2, 2025, introductory call Debevoise offered to schedule a call with you regarding the trial court’s decision and the litigation history, and we suggest that such a call be scheduled promptly.

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 COLE SCHOTZ P.C.

Todd Harrison
May 9, 2025
Page 2

We also note that the position in your letter that you are charged with “ensur[ing] the Debtor’s assets are not unnecessarily dissipated” due to the ongoing investigation presumes that the scope of the Examiner’s investigation has been Court-ordered. As you are aware, the scope of the Examiner’s responsibilities remains subject to further negotiation and, if necessary, adjudication by the Bankruptcy Court on May 22, 2025. Given that the Examiner’s scope remains an open point, the issues you raise in the Letter are premature. In the meantime, the Special Committee will continue to advance the case, consistent with the Bankruptcy Court’s understanding and instruction at the recent May 5, 2025, hearing.¹

Very truly yours,

COLE SCHOTZ P.C.

/s/ Michael D. Sirota

Michael D. Sirota
Member

cc: Warren Usatine, Esq.
Felice Yudkin, Esq.
Steven Klepper, Esq.
M. Natasha Labovitz, Esq.
Kristin K. Going, Esq.
Darren Azman, Esq.
Nathaniel Allard, Esq.
Morris S. Bauer, Esq.

¹ See, e.g., Transcript regarding Hearing Held 5/05/2025 at 21:7.

 COLE SCHOTZ P.C.

Todd Harrison
May 9, 2025
Page 3

Exhibit A

Response Letter to BML Properties, Ltd.

Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, NJ 07602-0800
201.489.3000 201.489.1536 fax



Michael D. Sirota
Member
Admitted in NJ and NY

Reply to New Jersey Office
Writer's Direct Line: 201.525.6262
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New York

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Delaware

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Maryland

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Texas

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Florida

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Washington, DC

May 9, 2025

VIA EMAIL ONLY

btheisen@gibbonslaw.com

Brett S. Theisen

Gibbons P.C.

One Gateway Center

Newark, New Jersey 07101-5310

Re: ***In re CCA Construction, Inc., Case No. 24-22548 (CMG) – Response Letter
Regarding Special Committee Investigation***

Dear Mr. Theisen:

As you know, Cole Schotz, P.C. (“Cole Schotz”) represents CCA Construction, Inc. (the “Debtor”) in its chapter 11 cases pending in the Bankruptcy Court for the District of New Jersey. This letter is in response to your letter dated May 7, 2025 (the “Letter”) wherein you – on behalf of BML Properties, Ltd. (“BMLP”) – requested that Cole Schotz “immediately cease all . . . investigative activities.” After conferring with the Debtor’s special committee of independent directors (the “Special Committee”), the Debtor, through the Special Committee, rejects your request and has advised Cole Schotz that it should continue to move forward with the independent investigation.

More substantively, the Letter asserts – without evidence – that the independent investigation should be halted due to allegations of “obvious conflicts of interest and lack of independence.” Contrary to your position, the investigation being conducted by the Special Committee and M. Elizabeth Abrams as the Special Committee’s disinterested independent director (the “Independent Director”) is free from any conflict of interest or lack of independence. The Letter fails to identify any conflict or bias on the part of the Special Committee and the Independent Director, nor is there any. The independence of the investigation is further reinforced by the fact that the Debtor has retained disinterested counsel – Cole Schotz – to conduct the investigation on the Debtor’s behalf. Cole Schotz had no prepetition relationship or involvement with the Debtor or the Debtor’s non-Debtor affiliates or subsidiaries, with the exception of limited work relating to preparation of the chapter 11 case. As you are aware, it is customary and appropriate for a disinterested counsel to investigate potential third-party claims and causes of action for a debtor-in-possession on a post-petition basis, and Cole Schotz’s familiarity with the Debtor from the case to date will allow such investigation to be conducted in an efficient manner.

 COLE SCHOTZ P.C.

Brett Theisen
May 9, 2025
Page 2

The Special Committee also recently retained Duane Morris LLP as counsel to advise on all matters within the Special Committee's authority, including oversight of the independent investigation and coordination with Cole Schotz.

In light of your failure to identify the "obvious conflicts of interest and a lack of independence," the Special Committee has determined that continuing its investigation is consistent with its fiduciary duties. Cole Schotz has been authorized and directed to continue to the independent investigation and intends to do so.

Very truly yours,

COLE SCHOTZ P.C.

/s/ Michael D. Sirota

Michael D. Sirota
Member

cc: Warren Usatine, Esq.
Felice Yudkin, Esq.
M. Natasha Labovitz, Esq.
Todd Harrison, Esq., in his capacity as Court-appointed Examiner
Kristin K. Going, Esq.
Deanna Boll, Esq.
Office of the United States Trustee (Attn: Fran Steele, Esq. and Peter D'Auria, Esq.)
Robert K. Malone, Esq.
Morris S. Bauer, Esq.

Exhibit E

From: Sirota, Michael <MSirota@coleschotz.com>
Sent: Tuesday, May 13, 2025 10:37 AM
To: Yudkin, Felice; fran.b.steele_usdoj.gov
Cc: Usatine, Warren; Harris, Daniel
Subject: RE: Natera Inc. v. Invitae Corporation (Adv. Pro. No. 25-01015-MBK) - Adjournment Request [IMAN-CSDOCS.FID2639368]
Attachments: image001.png; image002.png; Examiner Letter to S. Klepper 05.07.25.pdf; CCA - Ltr to Cole Schotz re Investigation 5-7-25.pdf

Good morning, Fran. You should know that some of the same MWE lawyers that are co-counsel with Gibbons in the Invitae case (and we suspect other matters) are also supporting the Examiner. How can the Examiner be independent? Did he make these disclosures to your office? On the evening of May 7, 2025, within a few hours of each other, we received the almost identical obnoxious letters from the Examiner and Gibbons (both attached) who are clearly working in concert. Please advise as to what the UST will do to correct this serious problem. Thank you



MICHAEL D. SIROTA

MEMBER

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NEW JERSEY NEW YORK DELAWARE MARYLAND TEXAS FLORIDA WASHINGTON, D.C.

VCARD | BIO | COLESCHOTZ.COM

Legal Practice Assistant: Caroline De Courcey | 201.489.3000 x 5020 | CDeCourcey@coleschotz.com

From: Yudkin, Felice <FYudkin@coleschotz.com>
Sent: Tuesday, May 13, 2025 9:51 AM
To: fran.b.steele_usdoj.gov <fran.b.steele@usdoj.gov>
Cc: Sirota, Michael <MSirota@coleschotz.com>
Subject: FW: Natera Inc. v. Invitae Corporation (Adv. Pro. No. 25-01015-MBK) - Adjournment Request
Importance: High

Fran – Good morning. Following up on our conversation from Friday, below is the email where it is clear that Gibbons and McDermott are co-counsel in the matter described below. Happy to discuss further.



FELICE YUDKIN
MEMBER

OFFICE 201.525.6261
CELL 201.315.8951
EMAIL fyudkin@coleschotz.com

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VCARD | BIO | COLESCHOTZ.COM

Legal Practice Assistant: Caroline De Courcey | 201.489.3000 x 5020 | CDeCourcey@coleschotz.com

From: Malone, Robert K. <RMalone@gibbonslaw.com>
Sent: Tuesday, May 13, 2025 9:38 AM
To: Chambers_of MBK <Chambers_of_MBK@nj.uscourts.gov>
Cc: Harris, Daniel <DHarris@coleschotz.com>; Usatine, Warren <WUsatine@coleschotz.com>; Sirota, Michael <MSirota@coleschotz.com>; Azman, Darren <Dazman@mwe.com>; Boll, Deanna <dboll@mwe.com>; Yudkin, Felice <FYudkin@coleschotz.com>
Subject: Natera Inc. v. Invitae Corporation (Adv. Pro. No. 25-01015-MBK) - Adjournment Request
Importance: High



Dear Judge Kaplan:

Gibbons P.C., together with McDermott, Will & Emery LLP, serve as co-counsel for Natera Inc. (“Natera”) in the above-referenced adversary proceeding. Natera, by way of its counsel, submits the attached Adjournment Request, without the consent of Invitae Corporation (“Invitae”), for the Debtors’ Motion to Dismiss Natera Inc.’s Adversary Complaint for Failure to State a Claim Upon Which Relief Can Be Granted [ECF No. 8] (the “Motion to Dismiss”), which is currently scheduled for a hearing on May 22, 2025 at 10:00 a.m. Natera respectfully requests that the Court reschedule the hearing on the Motion to Dismiss to 11:00 a.m. on June 26, 2025 or as soon thereafter as counsel may be heard over the objection of the Debtors’ counsel.

Gibbons and McDermott, Will & Emery, as well as Cole Schotz, co-counsel for Invitae, are all counsel of record in *In re CCA Construction, Inc.* (Bankr. D.N.J. Case No 24-22548), pending before your colleague, the Hon. Christine M. Gravelle. On May 22, 2025 at 11:00 a.m., Judge Gravelle will be conducting a hearing to determine the scope and proposed budget for Todd Harrison, Esq of McDermott, Will & Emery, the examiner who has recently been appointed in the case (the “Examiner”). The scope of the Examiner’s appointment is expected to be a hotly contested matter and requires the attention of all parties involved. Moreover, determining the scope of the Examiner’s appointment is critical to advancing the CCA Construction case forward and any delay would greatly prejudice the parties. In comparison to the Motion to Dismiss presently pending before Your Honor, there will be little to no prejudice to the parties by adjourning the Motion to Dismiss to the end of June when hopefully all parties will be available to proceed. As such, due to the

conflicting hearings, Natera respectfully requests that the Court adjourn the hearing on the Motion to Dismiss, which would allow the parties in the CCA Construction case to focus their attention on that matter.

On Friday, May 9, 2025, the Court provided my associate, Kyle McEvilly, with proposed dates for a rescheduled hearing on the Motion to Dismiss. The Court provided dates during the week of May 26, 2024, in addition to June 5, 2025. Unfortunately, due to pre-existing commitments, including court-ordered, in-person mediation in the *In re The Diocese of Buffalo, N.Y.* (Bankr. W.D.N.Y. Case No. 20-19322), counsel for Natera is unavailable during the proposed dates and times provided by Court personnel.

Natera understands that Invitae opposes any adjournment of the hearing on the Motion to dismiss. As stated above, Natera respectfully submits that adjourning the hearing on the Motion to Dismiss will not prejudice Natera or Invitae, and Natera is committed to rescheduling the hearing on the Motion to Dismiss to June 26, 2025 at 11:00 a.m. or as soon thereafter as counsel may be heard.

Should the Court have any questions concerning the foregoing, counsel to Natera is available at the Court's convenience. Thank you for your considerations regarding this request.

Respectfully,

ROBERT K. MALONE | Director

Chair Emeritus, Financial Restructuring & Creditors' Rights Group

t: 973-596-4533 | c: 201-407-6235 | f: 973-639-6357

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